

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268 0001

MODIFICATION OF MAIL CLASSIFICATION SCHEDULE
REGARDING FIRST-CLASS MAIL SINGLE-PIECE
RESIDUAL PRICE TABLE

Docket No. MC2013-30

**FURTHER COMMENTS OF THE
NATIONAL POSTAL POLICY COUNCIL AND
THE MAJOR MAILERS ASSOCIATION**
(February 5, 2013)

The National Postal Policy Council (“NPPC”) and the Major Mailers Association (“MMA”) hereby respectfully submit these further comments on the latest version of the Postal Service’s proposal to amend the Mail Classification Schedule to raise rates on mailers of 2-ounce residual letters.¹ Even the latest version of the Postal Service’s proposal continues to conflict with the clear language set forth in the notice of market-dominant rate adjustments last October, which this Commission approved in November, and has already raised rates on an identifiable type of mail without the minimum advance notice required by law.

NPPC and MMA urge the Commission to reject the Postal Service’s latest revision as a rate increase in violation of 39 U.S.C. §3622(d)(2)(C) and 39 C.F.R. §3010.1, and as inconsistent with the Commission’s *Order on Price Adjustments for Market Dominant Products and Related Mail Classification Changes*, Docket No. R2013-1 at 81 (Nov. 16, 2012) (Order No. 1541). NPPC and MMA believe that the

¹ Notice of the United States Postal Service of Minor Classification Changes Related To First-Class Mail Single-Piece Residual Price Table (Jan. 8, 2013) (“USPS Notice”).

most practical and cost-effective way to do so is through a combination of having the Postal Service restore the correct understanding in the next version of the PostalONE software, which is currently expected in July, and to confer a credit on mailers who pay the 66 cent rate between January 27 and the release of the corrected PostalONE software.

Commission Order No. 1639 in this proceeding summarized the history of the “second-ounce free” in Presort mail and the new “blended” (that is, second ounce not “free”) residual Single Piece rate. As the Commission is aware, the Postal Service’s notice of market-dominant price adjustments filed in October 2012 announced a new, higher “blended” rate for Single-Piece Residual Machinable Letters at 48 cents for both one-ounce and two-ounce letters, per a new Table in the Mail Classification Schedule replicated here:

Single-Piece Residual Machinable Letters

<u>Maximum Weight (ounces)</u>	<u>Residual Machinable Letters (\$)</u>
<u>1</u>	<u>0.48</u>
<u>2</u>	<u>0.48</u>
<u>3</u>	<u>0.86</u>
<u>3.5</u>	<u>1.06</u>

United States Postal Service Notice of Market-Dominant Price Adjustment,
Attachment A, Page 4 of 128 (October 11, 2012) (“USPS M-D Notice”).

As this Table made clear, and as the Postal Service reiterated at that time in its *Notice*, the new price would be “48 cents for up to 2 ounces.” *Id.* at 15. The Postal Service also explained that applying the higher 48 cent price applicable to all 1- and 2-ounce pieces would allow it “to recover the lost additional ounce revenue while making it easy for the mailers to pay accurate postage” (*id.*) because of the single rate. This was perfectly clear. Residual pieces from a “second-ounce free” Presort mailing would pay 48 cents per piece, without mailers having to “go through the trouble of separating the 1 and 2 ounce pieces.” *Id.*

On January 8, 2013, the Postal Service changed this understanding by proposing to amend the Table above by adding a new footnote that reduces the availability of the rate while raising the price of a 2-ounce residual piece by 18 cents:

Single-Piece Residual Machinable Letters

Maximum Weight (ounces)	Residual Machinable Letters (\$)
1	0.48 ¹
2	0.48 ¹
3	0.86
3.5	1.06

1. This price applies only to mixed mailings of residual one-ounce and two-ounce machinable letters. Single-Piece Machinable Letter prices apply to Residual mailings for which one-ounce residual letters are separated from two-ounce residual letters.

USPS Notice at 3. After NPPC and MMA, and other parties objected, the Postal Service offered yet another version in its response to Chairman’s Information Request

No. 1, Question 4. There, the Postal Service proposed to revise its January 8 version by amending footnote 1 to the above price table to read as follows:

Single-Piece Residual Machinable Letters

Maximum Weight (ounces)	Residual Machinable Letters (\$)
1	0.48 ¹
2	0.48 ¹
3	0.86
3.5	1.06

1. This price applies only to residual machinable letters that are presented with a Presort mailing. Retail prices for Single-Piece Machinable Letters will apply if the residual letters presented with a mixed-weight Presort mailing are purely two-ounce items.

NPPC and MMA understand the latest version of the footnote to mean that the Postal Service will charge residual 1- and 2-ounce pieces the rates set forth in the table below. The horizontal line describes the Presort mailing (which could consist of either solely (“pure”) 1-ounce pieces, mixed 1- and 2-ounce pieces, or “purely” 2-ounce pieces. The vertical columns list the three possible types of residual pieces in these scenarios: “pure” 1-ounce pieces, mixed 1- and 2-ounce pieces, and “purely” 2-ounce pieces. The intersection of the horizontal row and the vertical column shows what rates would apply (n/a means that the category is likely no volume, because a Presort mailing consisting of solely 1- or 2-ounce pieces is unlikely to have residual pieces of the other weight):

Presort Mailing Residual	“pure” 1-oz. pieces	Mixed	“pure” 2-oz. pieces
“pure” 1-oz. pieces	46 (or 48) ²	46 (or 48)	46 (or 48)
Mixed 1- and 2-oz. pieces	n/a (or 48)	48	48
“pure” 2-oz. pieces	n/a	66	48

Does anyone think that these rates – including the 66 cents -- were clear from the Postal Service’s October notice in which the Postal Service said:

This 48-cent price is applicable to *all* the residual pieces weighing up to 2 ounces. A residual letter-shaped piece that weighs more than 2 ounces will pay the first ounce price of 46 cents and 20 cents for each additional ounce.

Id. at 16 (emphasis added)? The Postal Service would now have the Commission and mailers construe “all” to mean “all except pure 2-oz. residual items entered with a mixed 1- and 2-oz. mailing.”

The Postal Service’s position is that, notwithstanding the plain language in its October *USPS M-D Notice* in which it said unambiguously that the “new price will be 48 cents for up to 2 ounces,” the 66 cent rate was its intention all along. But that is not what the *Notice* said. The Postal Service’s “classification” change in fact constitutes a rate increase of 37.5 percent on 2-ounce residual letters, from 48 cents to 66 cents, compared to what the Commission approved only two months ago. Not only did the Postal Service ignore the Commission’s regulations covering adjustments

² One-ounce residual pieces would pay 46 cents if the mailer “goes to the trouble” of separating and entering these pieces separately, which the blended rate was intended to avoid, or 48 cents if entered as a residual part of the Presort mailing.

to market-dominant rates, but it also failed to give the minimum 45-day notice required by 39 U.S.C. §3622(d)(1)(C).

The Postal Service's revision to the rate Table is not a "minor" classification change, and cannot be justified under Commission rules 3020.90 and 3020.91, which govern requests to change the classification schedule. Rule 3020.90, which requires the Postal Service to ensure that the MCS accurately describes its products, does not authorize the Postal Service to make a substantive *change* to a product such as proposed here.

Nor does Rule 3020.91 apply. That rule allows corrections to the Mail Classification Schedule "that do not constitute a proposal to modify the market dominant product list." Here, however, either version of the new footnote would in fact modify the market-dominant product list approved by the Commission just two months ago in Order No. 1541. The new footnote is a substantial rate increase on an identifiable category of mail – 2-ounce residual letters.

The question is what to do about the situation. At the moment, confusion reigns in the mailing community. NPPC and MMA understand that, without waiting for the Commission to approve its proposed "classification" change, the Postal Service has charged ahead by implementing PostalONE software in a manner consistent with its latest version of the change, so that residual purely 2-ounce pieces from a mixed Presort mailing are today being charged 66 cents. NPPC and MMA note, by the way, that if this is in fact the case, then the Postal Service is charging a rate that nowhere appears in the price list that appears on its website

(<http://pe.usps.com/text/dmm300/Notice123.htm#2010116>) and that was published in the Domestic Mail Manual.

At the same time, NPPC and MMA members have expressed concern that the PostalONE software has been implemented in a confusing way that seems at odds with the Postal Service's position. For example, one member has informed NPPC that PostalONE will not allow it to separate residual 1-ounce and 2-ounce pieces from a mixed mailing for separate entry, but instead forces residual pieces to be mailed at the 48 cent rate (that is, the software does not allow the option of mailing mail separately at 46 and 66 cents). This is giving rise to mailing hassles, causing mailing services companies to have greater difficulty in reconciling postage fees with client bills, and is generally making dealing with the Postal Service more difficult.

In addition, mailers have now incurred, or are incurring, not one but *two* costly software changes. The first was incurred in late 2012 to revise mailing software to conform to the new blended 48 cent rate. The second was incurred, or is being incurred now, to revise that very same software to accommodate the Postal Service's latest version – including the 66 cent rate – in order to ensure that mailings are not rejected. Were the Commission to order the Postal Service to revert immediately to the October language, that would mean that the PostalONE software in use since the rate changes took effect on January 27 would have to be revised yet again, and mailers would have to incur a *third* major cost in a very short time to revise their software yet again, or to revert to the first revisions that they made late in 2012.

NPPC and MMA believe that there may be a better solution. A new version of the PostalONE software is expected in July. It would be reasonable to direct the Postal Service to implement the rate change – as proposed in October – in the July version of the PostalONE software, and for the Postal Service to give a credit to mailers who will have paid 66 cents for residual 2-ounce pieces from mixed mailings.

NPPC and MMA do not know how many pieces this will affect. There are likely to be more 2-ounce residual pieces in the current postal quarter than in others in part to satisfy regulatory requirements related to tax preparation or shareholder votes, and in part because many companies have required a year's lead time to begin to incorporate the second ounce into their mailings. NPPC and MMA have frequently advised that major mailers need that kind of lengthy period before substantial implementation can begin. Nonetheless, NPPC and MMA are not able to quantify the volume at this time.

For some mailers, the amount of the postage increase for “pure” residual 2-ounce letters may be less than the cost of the investment in mail preparation software. In particular, the software changes to respond to the Postal Service's unilateral rate increase have been costly, unnecessary and uncompensated. And the implications are even larger. The Postal Service's gyrations suggest that it feels free to manipulate the implementation details of a rate change to alter the substance of what the Commission has approved.

For the foregoing reasons, the NPPC and MMA respectfully urge the Commission to reject the Postal Service's rate increase and hold that:

- The price for mixed 1- and 2-ounce mixed residual letters is 48 cents.
- The price for 2-ounce residual letters from “second-ounce free” Presort mailings is 48 cents in all instances.
- The Postal Service shall revise the next PostalONE software to be released in July to conform to this understanding, and
- Mailers paying the 66 cent rate for “pure” 2-ounce residual mailings between January and July shall receive a credit at the time of the release of the next PostalONE software.

Respectfully submitted,

MAJOR MAILERS ASSOCIATION
Mury Salls
DST Mailing Services
3531 Kilpatrick Lane
Snellville, GA 30039
MLSalls@dstmailingservices.com

Arthur B. Sackler
Executive Director
NATIONAL POSTAL POLICY COUNCIL
1101 17th Street, N.W.
Suite 1220
Washington, D.C. 20036
(202) 955-0097

William B. Baker
WILEY REIN LLP
1776 K Street, N.W.
Washington, DC 20006-2304
Telephone: (202) 719-7255
E-Mail: wbaker@wileyrein.com

Counsel to NATIONAL POSTAL POLICY
COUNCIL